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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

DERRICK CLAYTON WHITE,

Defendant and Appellant.

B277027

(Los Angeles County  
Super. Ct. No. NA081001)

APPEAL from an order of the Superior Court of  
Los Angeles County. Jose I. Sandoval, Judge. Affirmed.

Jean Ballantine, under appointment by the Court of  
Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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In his second appeal related to a 2011 judgment for robbery and possession of a firearm by a felon, Derrick Clayton White challenges the denial of his new trial motion. White's appointed counsel filed an opening brief in which no issues were raised. White then submitted a supplemental brief contending he was deprived of a fair trial because of ineffective assistance of counsel and prosecutorial and judicial misconduct. We affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### *1. The Underlying Case*

In February 2009, White entered the Super Bargain store in Long Beach and requested assistance from the store manager John Melliza and cashier Hilda Cortez in finding some merchandise. (*People v. White* (Oct. 20, 2014, B249716) [nonpub. opn.].) When he reached the front of the cashier's line, White produced a gun and demanded that Cortez surrender the money from the cash register drawer. (*Id.* at pp. 2-3.)

As White left the store wearing black gloves and carrying the cash register drawer overflowing with money, he caught the attention of taxi driver Mohammad Itani, who was in the parking lot. Itani and Melliza decided to follow White on foot as he left the parking lot. White walked toward some apartments until he reached a dead end. Turning toward Itani and Melliza, White said, "Get out of here," and fired his gun in the air. White then got into a red car driven by Sandra Davis. Melliza telephoned the police emergency operator and gave a description of the car and its occupants. (*People v. White, supra*, B249716, at pp. 3-5.)

Long Beach Police Officer Nicholas Kent began following a car that matched the reported description. Kent was joined by two other police vehicles and a police helicopter. A pursuit ensued, during which a black glove, cash register drawer, a

loaded gun and cash were tossed out of the front passenger window. (*People v. White, supra*, B249716, at pp. 4-5.)

The police pulled over the red car in a grocery store parking lot and took White and Davis into custody. Officers recovered a large amount of cash in White's wallet and in various places inside the red car. (*People v. White, supra*, B249716, at pp. 5-6.)

The police conducted field show-ups with Melliza, Itani and Cortez in the grocery store parking lot. They each recognized White as the robber and identified him as the robber at trial. (*People v. White, supra*, B249716, at pp. 6-10.)

Prior to trial, the trial court heard and denied White's two motions for discovery of police personnel records. (Evid. Code, § 1045; *Pitchess v. Superior Court* (1974) 11 Cal.3d 531.) The court also denied White's motion to suppress the field show-up identifications and one preliminary hearing identification. (*People v. White, supra*, B249716, at pp. 11-12.)

The jury convicted White of second degree robbery (Pen. Code, § 211) and possession of a firearm by a felon (Pen. Code, § 12021, subd. (a)(1)). The jury found true the special allegation that White had personally discharged a firearm during the robbery (Pen. Code, § 12022.53, subd. (c)). In a bifurcated proceeding, White admitted he had suffered four prior serious or violent felony convictions within the meaning of the Three Strikes law (Pen. Code, §§ 667, subds. (b)-(i), 1170.12), five prior serious felony convictions under Penal Code section 667, subdivision (a)(1), and had served five separate prison terms for felonies (Pen. Code, § 667.5, subd. (b)). The trial court sentenced White to an aggregate indeterminate state prison term of 95 years to life. White appealed. (*People v. White, supra*, B249716, at pp. 12-13.)

## *2. The Appeal*

On appeal, this court concluded White had failed to show the identifications by Melliza, Itani and Cortez were the result of an impermissibly suggestive field show-up. However, we conditionally reversed the judgment and remanded the matter for the trial court to conduct an in camera review of police personnel records limited to the police officers involved in the vehicle pursuit and White's arrest and relating to claims of falsifying, destroying or concealing evidence or fabricating reports. If the inspection revealed no relevant information, the trial court was to reinstate the judgment. If the inspection revealed relevant information, the trial court was to order disclosure, allow White an opportunity to demonstrate prejudice, and order a new trial if there was reasonable probability the outcome would have been different had the information been disclosed. If no prejudice was shown, the trial court was to reinstate the judgment of conviction. If the judgment were reinstated, we directed the trial court to modify the sentence in several respects. (*People v. White, supra*, B249716, at pp. 25-26, 32-38, 45-46.)

## *3. Proceedings on Remand in the Trial Court*

On remand, the trial court conducted an in camera review of the police personnel records as directed by this court and found discoverable information which was provided to White.<sup>1</sup>

Following an investigation, White moved for a new trial. According to White, if called as a witness, Tiffany Palmer, an

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<sup>1</sup> Although the defense had originally sought the personnel records of 17 officers, based on our directions on remand, the parties stipulated that the trial court would instead review in camera the personnel records of five officers for discoverable information.

African American, would testify that Officer Kent had detained her and her boyfriend at gunpoint in 2014 as they were walking down the street, accused her of trespassing, and addressed them using racial slurs and epithets before finally releasing them. White maintained his inability to have Palmer and corroborating witnesses testify at trial prejudiced him because there was a reasonable possibility the outcome of the trial would have been different had this evidence been disclosed prior to trial.

After a hearing on June 23, 2016, the trial court denied the motion, noting the purported incident involving Palmer and Officer Kent had occurred after the 2011 robbery. The court further noted there were three independent witnesses to the robbery, Melliza, Itani and Cortez, who had identified White as the robber moments after the crime had occurred.

## **DISCUSSION**

White filed a timely notice of appeal from the June 23, 2016 order denying his motion for a new trial and reinstating the judgment. We appointed counsel to represent White on appeal.

After examination of the record counsel filed an opening brief in which no issues were raised. On February 24, 2017 we advised White he had 30 days within which to personally submit any contentions or issues he wished us to consider. On March 24, 2017, we received from White a typed nine-page supplemental brief in which he claimed he had been denied due process and a fair trial on numerous grounds. White, who is African American, contends his trial attorney was constitutionally ineffective by failing (1) to contest the prosecutor's use of peremptory challenges to excuse African-American prospective jurors, (2) to have an eyewitness identification expert testify about cross-racial identifications, (3) to challenge on cross-examination the in-court

identification of White by an [unnamed] “eye witness/victim,” and (4) to conduct an adequate investigation and present a meritorious defense. White additionally contends the prosecutor committed misconduct by introducing perjured eye witness identification testimony at trial and the trial court committed misconduct by (1) allowing the prosecutor to introduce false eyewitness testimony, (2) failing to order the discovery of the personnel records of additional officers, (3) allowing the introduction of prejudicial evidence, (4) thwarting White’s attempt to impeach the testimony of certain police officers, (5) misreading a jury instruction, and (6) refusing to allow White to present an eyewitness identification expert.

We have examined the entire record and are satisfied White’s appellate attorney has fully complied with the responsibilities of counsel and no arguable issue exists. (*Smith v. Robbins* (2000) 528 U.S. 259, 277-284 [120 S.Ct. 746, 145 L.Ed.2d 756]; *People v. Kelly* (2006) 40 Cal.4th 106, 118-119; *People v. Wende* (1979) 25 Cal.3d 436, 441-442.) The issues White attempts to raise were either addressed in his earlier appeal and found to have no merit or are beyond the scope of this appeal.

**DISPOSITION**

The order is affirmed.

ZELON, J.

We concur:

PERLUSS, P. J.

SEGAL, J.